

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10046 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

FARID SULEMAN GAJIYA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive detention dated 26th October, 1998 made by the District Magistrate, Surat, under the powers conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985

[hereinafter referred to as, 'the Act'].

3. I have perused the grounds of detention. It is alleged that three offences have been registered against the petitioner. Two of the said offences are publishable under Chapter-XVI of the IPC. One of the offences registered on 31st October, 1997 is pending trial and the latter two offences registered on 6th October, 1998 and 8th October, 1998 are pending investigation. Besides, the detaining authority has relied upon statements made by some three witnesses. The nature of the two offences committed and the incidents narrated by the witnesses refer to the anti-communal activities carried on by the petitioner. The petitioner is, therefore, believed to be a dangerous person within the meaning of Section 2 (c) of the Act and his activities are held to be prejudicial to the maintenance of public order.

4. The subjective satisfaction recorded by the detaining authority suffers from the vice of non-application of mind inasmuch as of the three offences registered against the petitioner, one registered on 6th October, 1998 is not punishable under any of the provisions contained in Chapter XVI or XVII of the IPC or under Chapter V of the Arms Act. The said offence, therefore, could not have been taken into consideration while recording the subjective satisfaction in respect of the petitioner being a habitual offender and consequently a dangerous person, within the meaning of Section 2 (c) of the Act. Further, it is stated that for the offences registered as CR No. 225 of 1998, the petitioner has been arrested and remanded to the judicial custody. The petitioner has not applied for bail, however, the said fact though being vital for recording his subjective satisfaction, has not been taken into consideration by the detaining authority i.e. to say that the detaining authority has failed to take into consideration all the relevant materials and the subjective satisfaction recorded by him, therefore, is vitiated. The assertion that the petitioner has been remanded to the judicial custody and has not applied for release on bail has not been controverted. Since the subjective satisfaction recorded by the detaining authority is vitiated, as aforesaid, the consequential order of preventive detention should also fail.

5. The petition is, therefore, allowed. The impugned order dated 26th October, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

Prakash*